

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	CSR-6747-E
Mediacom Illinois LLC)	CSR-6752-E
)	CSR-6753-E
MCC Illinois LLC)	CSR-6757-E
)	CSR-6776-E
Nine Petitions for Determination of Effective)	CSR-6777-E
Competition in Thirty Local Franchise Areas in)	CSR-6778-E
Illinois)	CSR-6787-E
)	CSR-6789-E

MEMORANDUM OPINION AND ORDER

Adopted: December 28, 2005

Released: December 29, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers nine petitions filed with the Commission by Mediacom Illinois LLC and MCC Illinois LLC ("Mediacom") pursuant to Sections 76.7, 76.905(b)(1)&(2) and 76.907 of the Commission's rules for a determination that Mediacom's cable systems serving thirty Illinois communities (the "Communities") are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act") and are therefore exempt from cable rate regulation.¹ The Communities are listed in Attachment A. No opposition to any petition was filed. We grant the petitions finding that the Mediacom cable systems are subject to effective competition in the listed Communities.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,² as that term is defined by Section 623(1) of the Communications Act, and Section 76.905 of the Commission's rules.³ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁴

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at

¹ 47 C.F.R. §§ 76.7, 76.905(b)(2), 76.907; 47 U.S.C. § 543(a)(1).

² 47 C.F.R. § 76.906.

³ 47 C.F.R. § 76.905.

⁴ See 47 C.F.R. §§ 76.906 & 907.

least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.⁵ Turning to the first prong of this test, the DBS service of DirecTV, Inc. (“DirecTV”) and DISH Network (“DISH”) is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁶ The two DBS providers’ subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH has become the fourth largest, MVPD provider.⁷ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the Communities listed on Attachment A are DBS subscribers, we conclude that the population of the Communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission’s program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁸ We further find that the Mediacom cable systems have demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise areas.⁹ Mediacom has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the Communities, that there exists no regulatory, technical, or other impediments to households within the Communities taking the services of DBS providers, and that potential subscribers in the Communities have been made reasonably aware of the MVPD services of DirecTV and DISH.¹⁰ Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Mediacom sought to determine the competing provider penetration in the Communities by using a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis.¹¹ Mediacom asserts that it is the largest MVPD in the majority of the Communities because its subscribership exceeds the aggregate DBS subscribership for those franchise areas.¹² With respect to the Communities of Fairmont City, Washington Park, Belvidere,¹³ Hebron, Clear Lake Village, Clear Lake Township, Crawford County, Cortland and Maple Park, Mediacom asserts that it cannot

⁵ 47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁶ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁷ *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, at ¶¶ 54-55 (rel. Feb. 4, 2005).

⁸ *See* 47 C.F.R. § 76.905(g).

⁹ Mediacom Petitions at 5 and Exhibits B & C.

¹⁰ *Id.* at 3-4 and Exhibit A.

¹¹ *Id.* at 6. The Commission has previously approved the zip code plus four methodology. *See, e.g., Marcus Cable Associates, LLC d/b/a Charter Communications, Inc.*, 17 FCC Rcd 16652 (2002), *aff’d* 18 FCC Rcd 9649 (2003); *Vicksburg Video, Inc.*, 17 FCC Rcd 16659 (2002); *Kilgore Video, Inc.*, 17 FCC Rcd 16662 (2002).

¹² *Id.* at 6. Mediacom states that its subscriber numbers are derived from its billing system using addresses to which Mediacom provides service. *Id.* at n.19 (for CSRs 6747-E, 6778-E and 6789-E) and *Id.* at n.20 (for CSRs 6757-E, 6776-E and 6777-E) and *Id.* at n.21 (for CSRs 6752-E, 6753-E and 6787-E).

¹³ Mediacom does not provide the aggregate DBS subscriber number for this Community, but does assert that Mediacom is not the largest MVPD in Belvidere and effective competition exists under the low penetration test.

determine the largest MVPD in that Community because the SBCA aggregates the number of subscribers for the DBS providers and this number is larger than the Mediacom subscribers in these Communities.¹⁴

5. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Mediacom has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in those noted Communities. With regard to the Communities of Fairmont City, Washington Park, Hebron and Maple Park, we are able to conclude that this portion of the test is met by analyzing the data submitted for both Mediacom and the DBS providers. If the subscriber penetration for both Mediacom and the aggregate DBS information each exceed 15 percent in the franchise area, the second prong of the competing provider test is satisfied.¹⁵ In Fairmont City, the combined DBS penetration rate is 50.52 percent and Mediacom's penetration rate is 24.91 percent.¹⁶ In Washington Park, the combined DBS penetration rate is 22.28 percent and Mediacom's penetration rate is 17.14 percent.¹⁷ In Hebron, the combined DBS penetration rate is 45.90 percent and Mediacom's penetration rate is 25.64 percent.¹⁸ In Maple Park, the combined DBS penetration rate is 67.50 percent and Mediacom's penetration rate is 21.78 percent.¹⁹ Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

B. Low Penetration Effective Competition

6. Section 623(1)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system."²⁰ Mediacom asserts that it is subject to effective competition in Belvidere, Clear Lake Village, Clear Lake Township, Crawford County and Cortland.²¹ The information listed on Attachment A shows that Mediacom's penetration rate in Belvidere is 2.77 percent; in Clear Lake Village, its penetration rate is 10.58 percent; in Clear Lake Township, its penetration rate is 9.75 percent; in Crawford County, the penetration rate is 3.4 percent; and in Cortland, the penetration rate is 12.70 percent. Accordingly, we conclude that Mediacom has demonstrated the existence of low penetration effective competition in these Communities.

¹⁴ Mediacom Petitions (CSR-6747-E: Fairmont City and Washington Park), (CSR 6752-E: Belvidere and Hebron), (CSR-6753-E: Clear Lake Village and Clear Lake Township), (CSR-6776-E: Crawford County) and (CSR-6787-E: Cortland and Maple Park) at 6.

¹⁵ See *Time Warner Entertainment Advance/Newhouse Partnership, et al.*, 17 FCC Rcd 23587, 23589 (MB 2002).

¹⁶ 440 DBS subscribers ÷ 871 Fairmont City 2000 Census Households = 50.52%; 217 Mediacom subscribers ÷ 871 Fairmont City 2000 Census Households = 24.91%.

¹⁷ 377 DBS subscribers ÷ 1,692 Washington Park 2000 Census Households = 22.28%; 290 Mediacom subscribers ÷ 1,692 Washington Park 2000 Census Households = 17.14%.

¹⁸ 179 DBS subscribers ÷ 390 Hebron 2000 Census Households = 45.90%; 100 Mediacom subscribers ÷ 390 Hebron 2000 Census Households = 25.64%.

¹⁹ 189 DBS subscribers ÷ 280 Maple Park 2000 Census Households = 67.50%; 61 Mediacom subscribers ÷ 280 Maple Park 2000 Census Households = 21.78%.

²⁰ 47 U.S.C. § 543(1)(1)(A).

²¹ Mediacom Petitions (CSR-6752-E at 8), (CSR-6753-E at 7), (CSR-6776-E at 7) and (CSR-6787-E at 8).

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petitions filed by Mediacom Illinois LLC and MCC Illinois LLC for a determination of effective competition in the Communities listed on Attachment A **ARE GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Mediacom Illinois LLC and MCC Illinois LLC in the affected Communities **ARE REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.²²

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division
Media Bureau

²² 47 C.F.R. § 0.283.

Attachment A

Mediacom Cable Systems Subject to Competing Provider Effective Competition

CSR-6747-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Fairmont City, (Village of)	IL0695	50.52%	871	440
Washington Park, (Village of)	IL0694	22.28%	1, 692	377

CSR-6752-E

Caledonia Village	IL1736	46.48%	71	33
Capron Village	IL1084	44.88%	332	149
Hebron Village	IL1455	45.90%	390	179
Poplar Grove Township	IL1083	47.02%	453	213
Ringwood Village	IL1498	39.18%	171	67
Spring Grove Village	IL1488	82.16%	1,166	958

CSR-6753-E

Bulpitt Village	IL0709	22.92%	96	22
Clear Lake Village	IL0935	16.35%	104	17
Clear Lake Township	IL1205	17.78%	3,026	538
Edinburg Village	IL0707	19.63%	484	95
Jeiseyville Village	IL0710	28.57%	49	14
Mount Auburn Village	IL0930	16.14%	223	36
New Berlin	IL0736	29.67%	428	127

CSR-6757E

Gibson City	IL0154	15.66%	1,469	230
-------------	--------	--------	-------	-----

CSR-6776-E

Crawford County	IL0002	20.91%	7,842	1640
-----------------	--------	--------	-------	------

Oblong Village	IL0719	25.84%	681	176
Palestine Village	IL0718	23.04%	625	144
Robinson City	IL0003	19.37%	2,927	567

CSR-6777-E

Sullivan City	IL0825	21.65%	1,820	394
---------------	--------	--------	-------	-----

CSR-6778-E

Ashmore Village	IL0533	16.61%	307	51
-----------------	--------	--------	-----	----

CSR-6787-E

Cortland, Town of	IL1453	31.38%	701	220
-------------------	--------	--------	-----	-----

Gilberts Village	IL1646	60.66%	394	239
------------------	--------	--------	-----	-----

Hampshire Village	IL1092	50.74%	1,015	515
-------------------	--------	--------	-------	-----

Kirkland Village	IL1041	18.37%	430	79
------------------	--------	--------	-----	----

Malta Village	IL1086	19.62%	372	73
---------------	--------	--------	-----	----

Maple Park Village	IL1454	67.50%	280	189
--------------------	--------	--------	-----	-----

CSR-6789-E

Brimfield Village	IL0781	16.57%	362	60
-------------------	--------	--------	-----	----

Mediacom Systems Subject to Low Penetration Effective Competition

Communities	Census Households	Cable Subscribers	Penetration Level
Belvidere Township (Boone County)	8,953	248	2.77%
Clear Lake Village	104	11	10.58%
Clear Lake Township	3,026	295	9.75%
Crawford County	7,842	271	3.45%
Cortland	701	89	12.70%
Maple Park	280	61	21.78%

CPR = Percent DBS penetration

+ = See Mediacom Petitions